

	KANSAS CITY MISSOURI POLICE DEPARTMENT PERSONNEL POLICY	DATE OF ISSUE <u>08/24/2016</u>	EFFECTIVE DATE <u>08/24/2016</u>	NO. 335-4
	SUBJECT Policy Series 300: Employee Relations 335 - Civil Rights Investigations		AMENDS	
REFERENCE PPBM: "Internal Affairs Investigations" PI "Response to Community Complaints" USC Title 18, Sections, 242 Missouri Sunshine Law Memorandum of Agreement (MOA) between the Board of Police Commissioners and the Fraternal Order of Police Lodges No. 99 & 102 Memorandum of Understanding (MOU) between the US Attorney's Office, Jackson County Prosecuting Attorney's Office, the Federal Bureau of Investigation, and the Board of Police Commissioners.		RESCINDS 335-3		

*I. INTRODUCTION

- A. The purpose of this written directive is to ensure cooperation among agencies, outline procedures for handling alleged civil rights violations, which includes the initial assessment, investigation, and the ultimate prosecutorial decision, regardless of which agency receives the initial notice of an alleged civil rights violation. This directive also sets forth internal Department notification processes should a member become the subject of a civil rights investigation.
- B. Color of Law is an official action taken by an individual acting under the authority of local, state, or federal law, to willfully deprive a person of a right, privilege or immunity secured by the Constitution of laws of the United States. Violations of civil rights taken under color of law are usually prosecuted pursuant to 18 U.S.C Section 242.

II. POLICY

- A. Civil rights investigations pursuant to 18 U.S.C. Section 242 are criminal in nature and will be viewed as such.
- *B. The following types of incidents occurring under color of law are potential civil rights violations. The types of incidents do not necessarily require that any racial, religious, or other discriminatory motive exists. The following list should not be viewed as all inclusive and serves only as examples.
 1. Deprivation of property – When a member unlawfully obtains or maintains an individual's property, which oversteps or misapplies authority.
 2. Excessive force – When a member uses force in making an arrest, maintaining order, or defending life, and the force is objectively "unreasonable" given the totality of the circumstances known to the member at the time the force was used.

3. Fabrication of evidence – When a member falsifies evidence or information used to prove or suggest the guilt of an individual accused of a crime, taking away that individual's right to due process and unreasonable seizure.
 4. Failure to keep from harm – If a member willfully fails to keep an individual from harm that is being caused by another member acting under color of law.
 5. False arrest – An arrest by a member without probable cause; when the member knowingly arrests someone who has not committed a crime.
 6. Sexual assault – Any type of sexual contact or behavior that occurs without the explicit consent of the recipient; a member using their position of authority to coerce an individual into sexual compliance.
- *C. To the extent allowed by law, unless disclosure is necessary due to exceptional circumstances, the identity of any member reporting a potential civil rights violation will be kept confidential at the request of the reporting member.
- *D. As agreed upon by a Memorandum of Understanding (MOU) between the Department and the following agencies, when the Department receives notification of a possible civil rights violation caused by a member, the Department will assess the information and notify the other agencies:
1. Federal Bureau of Investigation (FBI)
 2. Jackson County Prosecuting Attorney's Office
 3. United States Attorney's Office, Western District of Missouri
- E. If the Department is notified of an alleged civil rights violation by a member occurring in Platte County, Cass County or Clay County, the Department will report the violation in the same manner as in the MOU referenced in Section II, D.
- F. The Department's point of contact for notifications will be the Deputy Chief of the Investigations Bureau.
- G. The involved agencies will determine which agency should be the lead agency to conduct the investigation.
- H. Regardless of which is the primary investigative agency, all involved agencies will work collectively during the investigation and prosecution, if any.

- I. Absent written consent of the member records regarding the incident or personnel records regarding the member will be disclosed outside of the Department only pursuant to a court order, subpoena, required per the Missouri Sunshine Law, or at the written request of the Missouri Department of Public Safety, Peace Officer Standards and Training.

***III. PROCEDURES**

A. Violations Reported by a Department Member

1. When a member becomes aware of a potential civil rights violation, the member will either:
 - a. Complete an Interdepartment Communication, Form 191 P.D. and forward it through their chain of command to be investigated, or
 - b. Report the potential violation verbally to a supervisor who will complete an Interdepartment Communication, Form 191 P.D. and forward the information to the Deputy Chief of the Investigations Bureau, or
 - c. Report the violation to any other law enforcement organization charged with receiving complaints of civil rights violations, including but not limited to, the Department of Justice, Office of Civil Rights.
2. The Deputy Chief of the Investigations Bureau will review the member's report, and notify the other listed agencies as stated in Section II, D-E, of this directive.

B. Violations Investigated by the FBI

The Deputy Chief of the Investigations Bureau will request that the FBI notify the Chief of Police in writing should the FBI initiate a civil rights investigation.

C. Notification of Subject Member

1. If a civil rights investigation is opened, the Deputy Chief of the Investigations Bureau will notify the Office of General Counsel (OGC).
2. The OGC will notify the subject member and the member's Bureau Commander of the civil rights investigation, in writing, within five business days.
3. The subject member will sign and date the written notification for purpose of showing receipt thereof. The subject member will be provided a copy of the signed and dated notification, with the original being retained by the OGC.

4. Exceptions to notifying the subject member and/or Bureau Commander may be made in unusual circumstances; e.g., an ongoing, covert investigation is being conducted.
- D. Closing of the Investigation
1. If neither federal nor state agency partners file charges against the subject member at the conclusion of the investigation, the Deputy Chief of the Investigations Bureau will request a written declination from the prosecuting attorney.
 2. The written declination will be forwarded to the OGC.
 3. The OGC will provide a copy of the written declination to the subject member and retain the original.
- E. The Chief of Police may, at his discretion and at any time, initiate an Internal Affairs investigation of the incident underlying the civil rights investigation. For further information refer to the current written directive entitled, "Internal Affairs Investigations."
- F. Complaints from members of the public, including but not limited to those filed with the Office of Community Complaints, that may implicate color of law violations pursuant to 42 U.S.C. Section 242, should be reported to the Deputy Chief of the investigations Bureau for review and processing in accordance with this directive.

Darryl Forté
Chief of Police

Adopted by the Board of Police Commissioners this _____ day of _____, 20__.

Michael Rader
Board President

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